

# **Contract Procedure Rules**

## **Carmarthenshire County Council**

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## **1. Introduction**

- 1.1.** The purpose of these Contract Procedure Rules is to set clear rules for the procurement of goods, services and works for the Authority so we obtain best value for money. This will ensure a system of openness, transparency and non-discrimination where the accountability and probity of the procurement process will be beyond reproach.
- 1.2.** Officers responsible for purchasing must comply with these Rules.
- 1.3.** These Contract Procedure Rules apply for the procurement of all goods, services and works for the Council.
- 1.4.** The Corporate Procurement Unit (CPU) must be contacted before any formal action is taken in respect of a goods or service activity exceeding £75,000 in total Contract value.
- 1.5.** The requirements for confidentiality in relation to information during the tender process are set out in the Officers Code of Conduct.
- 1.6.** Tenders over £25,000 in value must be advertised on [www.Sell2Wales.gov.wales](http://www.Sell2Wales.gov.wales). In exceptional circumstances this requirement may be waived following prior approval from the Head of Revenues and Financial Compliance and the relevant Department's Head of Service. (See CPR 7.1.3.1 for further details).
- 1.7.** Schools are required to follow the procedures outlined in the Financial Procedure Rules for Schools.
- 1.8.** Evaluation criteria of all Authority led exercises over £25,000 must consist of at least 70% based on Price. Where this is inappropriate the agreement of the Director of Corporate Services must be sought. (See CPR 8.3.1 for further details).
- 1.9.** Every contract made by or on behalf of the Authority shall comply with the Public Contracts Regulations 2015, National Legislation, these Contract Procedure Rules and the Authority's Financial Procedure Rules. In the event of any apparent conflict arising in respect of the above requirements the matter is to be referred to the Monitoring Officer or their representative.
- 1.10.** The CPU shall retain and update the Authority's Contracts Register and must be advised of all contracts entered into, including those resulting from framework call-offs.

- 1.11. All exceptions to these Rules must be reported to CPU for consideration prior to submission for approval via the online Exception Reporting System - Please see the procurement pages on the Intranet, and approved exceptions will be recorded on the Contracts Register. (See CPR 12 for further detail).
- 1.12. For support on how to apply these Rules see “The Procurement Guidance” on the Intranet which sets out specific guidance on procurement procedures or contact the Corporate Procurement Unit (CPU) for advice and support in the interpretation and application of these Rules.

## 2. Definitions and Interpretations

- 2.1. For the purposes of these Contract Procedure Rules, please see **Appendix 1** for the definitions that shall apply.
- 2.2. These rules are currently based on the UK being a member of the European Union. As the UK withdraws from the EU, any rules implemented in their place by the UK Government will apply.

## 3. Openness and Transparency

- 3.1. In order that all potential suppliers are treated fairly, equally and in a manner that does not discriminate, officers should ensure that they abide by the EC Treaty principles which include openness, transparency, proportionality and non-discrimination.
- 3.2. It is recognised that procurement can be the target of fraudulent and corrupt activity. Officers with procurement responsibility should be aware of their obligations in this respect. Relevant Policies and Procedures are currently detailed in the following documents:-
  - 3.2.1. Officers Code of Conduct
  - 3.2.2. Financial Procedure Rules
  - 3.2.3. The Chartered Institute of Purchasing & Supply Corporate Code of Ethics
  - 3.2.4. Anti-Fraud and Anti-Corruption Strategy
  - 3.2.5. Whistleblowing Policy

**3.3.** The Lead Officer (and Tender Evaluation Panel Members) must carry out appropriate measures to prevent, identify and remedy conflicts of interest to avoid any distortion of competition and unequal treatment of bidders. Such measures should address situations where officers or bidders who are involved in the procurement process have, directly or indirectly, any financial or personal interest which might be perceived to compromise their impartiality.

**3.3.1.** All officers involved in a Tender Evaluation Panel must complete a Conflict of Interests Declaration Form (Provided by CPU).

## **4. Lead Officers Responsibilities**

**4.1.** The Lead Officer for the purposes of these Contract Procedure Rules shall be any person designated as such in respect of:-

**4.1.1.** Any specified contract

**4.1.2.** Any category or categories of contracts, or

**4.1.3.** Any specified values or amounts in respect of that category or those categories

**4.2.** The Lead Officer shall be the primary link between the Authority and the relevant supplier, and shall be responsible for the management of that contractual arrangement and ensuring that the price(s) paid is/are in accordance with the terms of the contract.

**4.3.** The Corporate Procurement Unit must be advised of any proposed Tender exercise (over £75,000) by the Lead Officer before the tender exercise is commenced.

**4.4.** Prior to undertaking any tendering exercise the Lead Officer shall ensure that:-

**4.4.1.** The requirement cannot be obtained from existing corporate contracts, frameworks or other arrangements. Where corporate contracts, frameworks or other established procurement arrangements (e.g DPS) are in place, these must be used to satisfy that requirement. The Procurement section of the Intranet contains details of such arrangements. Further advice and guidance is available from CPU and;

## Lots

**4.4.2.** All necessary Authority approvals have been obtained in accordance with the Authority's Constitution together with budgetary provision, any necessary consents, permissions or other approvals (including loans or other financial approvals) and;

**4.4.3.** All other relevant corporate policies (including the Project Management Policy and Methodology, the Handling Personal Information Policy & Procedure, Data Protection Guide, Welsh Language Standards and Strategic Equality Plan) have been complied with.

**4.5.** The Lead Officer must give consideration to split any proposed contract into separate Lots, with a clear and documented rationale as to how the Lots will be awarded, and must clearly define the size and subject matter of the Lots. For above EU Threshold tenders, where the use of Lots is deemed inappropriate this must be registered in the Tender documents and logged in the Tender Evaluation Report. (See CPR 10.1 for more detail).

## External Funding

**4.6.** Where part or full funding for any proposed contract is to be provided by external Funders, the Lead Officer shall procure the contract in accordance with these Contract Procedure Rules.

Where there is a condition in the Funder's terms that are in conflict with these CPR's this issue must be referred to the Monitoring Officer and Section 151 Officer for determination, unless this has been previously agreed in the funding agreement.

## Risk

**4.7.** The Lead Officer must assess the risks associated with the purchase and how to manage any risks identified prior to the tender exercise commencing.

## Second Hand Purchasing

**4.8.** For the supply of used or second-hand goods or materials the Lead Officer needs to be satisfied that the market for such goods or materials is such that it would be unreasonable to tender or where the time required to complete the tender process is likely to lead to the loss of opportunity to purchase a used or second-hand item. Prior approval from Head of Service must be sought to ensure the value of the used/second hand goods to be supplied is at an appropriate level and does not contravene procurement processes. Any procurement valued over £5,000 needs to be referred to the Section 151 Officer and the Monitoring Officer.

## Tendering Procedures

## Dynamic Purchasing System and e-Auction Tools

## Welsh Language Standards

## General Data Protection Regulation (GDPR)

## Concession Contracts

- 4.9.** The Lead Officer can access guidance on the different tendering procedures available (e.g. Open, Restricted, Competitive Dialogue) in the Authority's Procurement Guidance. Different Procedures can be selected depending on the value of the goods, works or services being procured. The Guidance is available on the Intranet or contact the Corporate Procurement Unit (CPU) for advice.
- 4.10.** The Lead Officer may undertake the Procurement exercise by using a Dynamic Purchasing System or an Electronic Auction. The Lead Officer must contact CPU for further advice and guidance.
- 4.11.** The Lead officer is required to comply with the Welsh Language (Wales) Measure 2011 which means that Welsh should be treated no less favourably than the English language in Wales.
- 4.11.1.** The Welsh Language Measure and Welsh Language Standards also apply to any activity or service carried out on the Council's behalf by a third party under arrangements made between the third party and the Councils
- 4.12.** The Lead Officer must consider whether the supplier(s) will be provided with Personal Data by the Council or collect personal data on our behalf in line with the Data Protection Act 2018/General Data Protection Regulation. If this is the case the Information Governance and Complaints Manager must be consulted for further guidance.
- 4.12.1.** If the product/service being procured requires the use of new technologies in the collection/use of Personal Data that may be likely to result in a high risk to the rights and freedoms of the individuals a Data Protection Impact Assessment must be undertaken to identify and reduce any privacy risks. The Information Governance and Complaints Manager must be contacted for further guidance.
- 4.13.** Any Contracts where the Contractor makes a profit from the works/service is covered by the Concession Contracts Regulations 2016 (CCR 2016). The CCR has a higher threshold for its application (Please see procurement pages on the Intranet for the latest threshold). The Lead Officer must contact the Corporate Procurement Unit for guidance and support on the application of CCR.

## **5. Collaborative Arrangements and Frameworks**

All Collaborative Arrangements shall be deemed to be contracts for the purpose of these Contract Procedure Rules and Lead Officers shall have regard to the Public Contracts Regulations 2015 and the Authority's Procurement Guidance when developing such arrangements/agreements.

### **5.1. Framework Agreements – Carmarthenshire Lead**

In line with the Public Contracts Regulations 2015, the term of a Framework Agreement must not exceed four years, unless in exceptional circumstances and with prior approval from the Section 151 Officer and the Monitoring Officer.

**5.1.1.** Contracts based on Framework Agreements may be awarded by either:-

**5.1.1.1.** Applying the terms laid down in the framework agreement (where such terms are sufficiently precise to cover the particular call-off) without reopening competition or;

**5.1.1.2.** Where the terms laid down in the framework agreement are not specific enough or complete for the particular call-off, by holding a mini-competition in accordance with the following:-

- Inviting all the suppliers within the Framework Agreement that are capable of executing the subject of the contract to submit written tenders;
- Fixing a time limit which is sufficiently long to allow tenders for each specific contract to be submitted, taking into account the complexity of the subject of the contract,
- Awarding each contract to the tenderer on the basis of the Award Criteria set out in the specification of the Framework Agreement.



**5.1.2.** Above the EU Threshold the Lead Officer must contact CPU prior to any mini-competition undertaken to agree the approach.

**5.1.3.** The requirements of these Contract Procedure Rules are deemed to have been satisfied when the framework is established, and for subsequent call-offs.

**5.2. Joint Procurement / Centralised Purchasing Activities – Authority Lead arrangements / frameworks**

**5.2.1.** When undertaking a joint procurement arrangement on behalf of the Authority and other public bodies, the lead officer must determine whether the Authority is carrying out an Occasional Joint Procurement OR Central Purchasing Activities in line with the Public Contracts Regulations 2015. CPU must be contacted to advise and agree the approach.

**5.2.2.** When undertaking a joint procurement arrangement on behalf of the Authority and other public bodies, the Lead officer must ensure the other public bodies that are to be included in that arrangement are listed in the advertisement and contract documents.

**5.2.3.** The estimated value given must include the potential usage of that joint arrangement by those public bodies listed.

**5.2.4.** The requirements of these Contract Procedure Rules are deemed to have been satisfied when the framework is established, and for subsequent call-offs.

**5.3. Centralised Purchasing Activities / Bodies – Use of other public bodies arrangements / frameworks**

**5.3.1.** Any contract/framework entered into through collaboration with other local authorities or other public bodies, where a competitive process has been followed, that comply with the contract procedure rules of the leading organisation, will be deemed to comply with these Contract Procedure Rules. Before entering into any such arrangement the Lead Officer must consult and seek approval from CPU.

#### **5.4. Membership of other Procurement Arrangements**

- 5.4.1.** Any new formal membership of any organisation whose purpose is to facilitate joint procurement arrangements with other local Authorities and/or public sector bodies, including membership or initial use of any Consortia or public sector trading organisation must be approved by the Monitoring Officer and Section 151 Officer.

### **6. Pre-Procurement Requirements**

#### **6.1. Estimating the Value**

- 6.1.1.** The value of a contract must be based upon the higher of:-
- 6.1.1.1.** The amount or estimated amount to be paid by the Authority over the period of the contract (to include any extension period); or
  - 6.1.1.2.** The amount or estimated amount of gross income to be generated by the contractor through the goods or services provided, including the provision of goods or services to third parties.
- 6.1.2.** A contract which is one of a series of contracts with similar characteristics, and for services of the same type is deemed to have the value of the series as a whole.
- 6.1.3.** Where the Lead Officer is unable to determine the value of a proposed contract an estimate shall be made on the basis of a 48 month contract period.
- 6.1.4.** In estimating relevant contract values, officers shall have regard to the principle of aggregation. Repeat purchases of the same set of goods/services/works over a sustained period may exceed the Authority's or EU's threshold, and must be treated as one contract.  
(e.g. 48 monthly purchases at £4,000 per month equals £192,000 total contract value) and the appropriate Tender/EU procurement process must therefore be adhered to.

## 7. Thresholds

### 7.1. Quotations

#### 7.1.1. Up to £5000

The Lead Officer should be satisfied that best value for money has been obtained, and that reasonable care has been taken to obtain goods, works or services of adequate quality at a competitive price. Confirmation of value for money should be retained on file by the Lead Officer.

#### 7.1.2. £5,000 - £25,000

A minimum of 3 quotations should be sought from competitive sources and confirmed in writing, by letter, fax or e-mail. A documented record of the evaluation and decision to award must be recorded.

#### 7.1.3. £25,000 - £75,000

**7.1.3.1.** All quotations above the value of £25,000 must be advertised on the Sell2wales website; ([www.sell2wales.gov.wales](http://www.sell2wales.gov.wales)) based on the same specification, evaluation criteria and closing date. CPU will place the advert, unless otherwise agreed. In exceptional circumstances this requirement may be waived following prior approval from the Head of Revenues and Financial Compliance and the relevant Department's Head of Service.

**7.1.3.2.** Quotations undertaken in accordance with 7.1.3.1 shall be submitted in line with the requirements set out in the Invitation to Quote, and returned electronically via a secure email facility or an appropriate e-tender solution. Alternatively a hard copy must be addressed to the Lead Officer in a plain sealed envelope endorsed only with the word "Quotation", followed by the subject to which it relates and the closing date.

**7.1.3.3.** The Lead Officer will be responsible for maintaining adequate documented records of all quotations undertaken (including the evaluation process) (See 9.7 for further details).

**7.1.3.4.** A quotation received in accordance with the procedures may be accepted by means of issuing either an official order or letter signed by the appropriate officer, or by a contract or agreement signed in accordance with these Rules.

**7.1.3.5.** Where, following issue of Invitations to Quote only one quotation is received the decision to proceed to purchase must be approved by the relevant Department's Head of Service.

## **7.2. Tenders**

### **7.2.1. Over £75,000**

**7.2.1.1.** For all procurements valued at and above £75,000 the Contract Lead Officer must advise the Corporate Procurement Unit before the tender exercise is commenced.

**7.2.1.2.** A Tender Record Form must be completed and signed off by the Corporate Procurement Unit's Principal Procurement Officer - Category Lead (or delegated Officer) prior to tender advertisement which includes the requirement to confirm a complaint process.

**7.2.1.3.** In addition to any requirements under the Public Contracts Regulations 2015 a minimum 21 days public notice shall be given in [www.Sell2Wales.gov.wales](http://www.Sell2Wales.gov.wales) and, if considered appropriate by the Tender Evaluation Panel, in one or more appropriate local, regional and/or national newspapers, publications and/or trade journals, or other media that targets the relevant market for the particular contract.

**7.2.1.4.** The public notice shall express the nature and purposes of the contract, invite tenders for its execution, state the latest date and time for delivery of tenders and the address to which such tenders are to be sent/or portal to be received via. The Invitation to Tender shall include all information necessary to ensure compliance with the provisions of these Contract Procedure Rules including the evaluation criteria.

### 7.3. EU Tenders

Contracts above the EU Threshold and subject to the Public Contract Regulations 2015.

**7.3.1.** Where the estimated value of a contract exceeds the current EU threshold, then the contract must be tendered in accordance with the UK's Public Contracts Regulations (2015) and these CPR's. In all such circumstances appropriate advice must be sought from the Corporate Procurement Unit.

**7.3.2.** The EU Thresholds change every two years. The current EU Threshold for goods, services and works can be found on the Procurement pages of the Intranet.

### 7.4. Social and Other Specific Services

**7.4.1.** Where contracts exceed the EU Threshold for Social and other Specific Services Contracts (as set out in Schedule 3 of the Public Contracts Regulations 2015) the full extent of the Regulations will not apply and a "Light Touch" regime shall be adopted. The Lead Officer must contact CPU before proceeding with this type of tender.

## Evaluation Criteria

## Evaluation Panel

## Financial Assessments

### **8. Preparation for Quotations (£25,000-£75,000) and Tenders (over £75,000)**

**8.1.** Before undertaking any Tendering Procedure (or Quotation above £25,000) a Lead Officer shall:-

**8.1.1.** ensure that a Specification, which will form the basis of the Contract, has been prepared,

**8.1.2.** establish the Evaluation Criteria to be used to select the successful bidder(s) from among those who tendered or submitted a quote.

**8.1.3.** establish an Evaluation Panel,

**8.2.** A statement setting out the Evaluation Criteria to be used shall be included in the tender/quotation documentation together with the relevant weightings. These criteria must at all times be open, transparent, non-discriminatory and proportionate.

**8.3.** Contracts must be awarded on the basis of “Most Economically Advantageous Tender” (MEAT) with the option of assessing the best price-quality ratio, or lowest price only. The award criteria must be linked to the subject matter of the contract and may include life-cycle costing, qualitative, environmental and/or social aspects.

**8.3.1.** Evaluation criteria of all Authority led exercises above £25,000 needs to ensure that at least 70% is based on Price. Where this is inappropriate then the agreement of the Director of Corporate Services must be sought in writing.

**8.3.2.** Arrangements involving Specialist Education and Social Care commissioning will be at the discretion of the responsible Director.

**8.4.** The Lead Officer shall establish a group of Officers to undertake the evaluation exercise which shall normally remain constant throughout the process and shall possess the necessary qualifications and/or expertise to advise the Lead Officer on all appropriate issues.

**8.5.** The Authority’s Finance team must be consulted prior to commencing a tender exercise to determine the appropriate level of financial assessment required, both at the tender stage and throughout the duration of the subsequently awarded framework/contract (where appropriate). Suitably qualified officers within the finance team must undertake all appropriate financial assessments as part of the Procurement Process.

## Insurances

**8.6.** The Authority's Head of Revenues and Financial Compliance shall be consulted to determine the appropriate type and level of Insurance Protection (e.g. Employers' Liability, Public Liability, Professional Indemnity etc) to cover the Authority's potential liability which must be maintained for the duration of the Contract / Framework.

**8.7.** The Lead Officer shall consider whether a Bond is appropriate for any contract.

## Specification

**8.8.** Procurements should be based upon a definite specification; and the Lead Officer should ensure that any quotation or tender exercise is undertaken in accordance with all relevant corporate policies. Quality factors should as far as possible be built in to the specification, which must be proportionate and appropriate for the goods, works or services to be purchased and clearly sets out the minimum standards that the Authority will require.

## Sustainability

**8.9.** In any tender/quotation valued over £25,000 the Lead Officer must consider taking social, economic and environmental issues into account using a Sustainable Risk Assessment Template (SRA). CPU shall be consulted prior to any tender/quotation/call-off to agree the approach.

## Community Benefits

**8.10.** The Lead Officer must apply a Community Benefits approach to all appropriate procurements. In any tender valued over £1million the Lead Officer must, as a minimum, apply, capture and record Community Benefits utilising the Welsh Government's Community Benefits Measurement Tool. CPU shall be consulted prior to any tender/quotation/call-off to agree the approach.

## Pre-Market Consultation

**8.11.** The Lead Officer may conduct market consultations before starting a procurement exercise with a view to preparing the procurement and informing prospective tenderers of the procurement plans and requirements. CPU must be notified prior to any pre-market consultations whereby support is available.

## Market Briefing

**8.12.** The Lead Officer may conduct market briefings once a Tender advert has been placed to inform prospective tenderers of the content and approach for the forthcoming tender. This engagement is intended for information purposes only and Lead Officers/Procurement Officers are not in a position to be able to answer any questions relating to the tender at the event. CPU must be notified prior to any market briefings whereby support is available.

## **9. The Procurement Process**

### **9.1. Submission of Tenders (above £75,000)**

(For Quotations below £75,000 please refer to 7.1).

The Authority's preferred method of tendering is by electronic means.

#### **9.1.1. Electronic Tendering (e-Tender)**

Requests for invitations to tender should be transmitted by electronic means using the e-Tender portal. This will ensure that:

(a) the e-Tender portal will only be available for the submission of tenders up to the stated deadline time and date. The date and time of each Tender received within the e-Tender portal will be recorded electronically.

(b) e-Tenders submitted are kept secure in the portal which is not opened until the deadline has passed for receipt of Tenders or Quotations.

Any tender which is received after the date and time appointed for receipt of tenders shall not be considered but shall be retained unopened on the portal until after a tender has been accepted, however any such tender may be opened and considered:-

- if no other tender has been received, or
- where no other tender is acceptable, provided it has been received before other tenders have been opened.

**9.1.2.** In exceptional circumstances the Lead Officer may decide to accept hard copy tendering as an alternative. The Leads Officer must contact CPU for further guidance.

### **9.2. Opening of Tenders**

All tenders submitted in pursuance of these Contract Procedure Rules shall be opened only after the expiration of the time limit for their delivery.

Tender submissions will be accessed once the tender deadline has passed by an officer of the Corporate Procurement Unit or an officer from within a department who has been granted access to the portal.



**9.2.1.** No adjustment or qualification to any tender(s) is permitted. Errors found during the examination of tenders shall be dealt with in one of the following ways:-

**9.2.1.1.** If an arithmetical error is found the tenderer shall be given the opportunity to correct the error(s) save that, other than genuine arithmetic error(s), no other adjustment revision or qualification is permitted.

**9.2.1.2.** If the error is not arithmetical the tenderer shall be given details of the error(s) and shall be given the opportunity of confirming without amendment or withdrawing the tender.

**9.3.** Where in the opinion of the Lead Officer the tender appears to be abnormally low in value, in accordance with the Public Contracts Regulations 2015 the Lead Officer is required to request the tenderer(s) to explain the price or costs proposed in a tender where it appears to be abnormally low. CPU must be consulted for guidance.

**9.4. Evaluation and Acceptance of Tenders**

**9.4.1.** Where tenders have been received and opened in accordance with these Contract Procedure Rules the Lead Officer shall, in conjunction with the tender evaluation panel, examine the tenders received in accordance with the pre-determined evaluation criteria and shall identify the tender or tenders which represents best value for money, ie the most economically advantageous offer(s) (in terms of quality and price) to the Authority, except where lowest price was pre-determined to be the appropriate criteria.

**9.4.2.** The Lead Officer must give due regard to abide by the principle of the Authority's Constitution which only allows officers employed by the Authority to score in Tender evaluations.

**9.4.3.** For Procurement Tender Exercises subject to / governed by / with a Joint Governance Committee, a cross-section of officers from other Public Sector bodies, subject to those bodies obtaining their own prior approvals, may sit on the Authority's Tender evaluation panel and score.

**9.4.4.** Provided that the appropriate budgetary provision is available the Lead Officer may accept a tender, more than one tender, or part(s) of a tender.

## Post Tender Negotiations

- 9.5.** No negotiations on fundamental aspects of contracts which might materially affect the tender specification, and which are likely to distort competition shall be carried out.

Discussions can only be carried out with tenderers for the purpose of clarifying their bids and must not involve discrimination against any tenderer.

## Standstill

- 9.6.** For Contracts above the EU Threshold and subject to the Public Contract Regulations 2015 any award must be subject to a minimum standstill period of 10 calendar days between communication of intention to award decision and the start of the contract. CPU can offer guidance and templates.

## Document Retention

- 9.7.** The Lead Officer shall retain all records and documents relating to a quotation or tender exercise in accordance with the Public Contracts Regulations 2015, the Authority's Document Retention Schedule (on the Intranet) and any other requirements imposed by or agreed with external funding bodies.

## Consultants

### **9.8. Use of Consultants**

- 9.8.1.** Where the Authority uses consultants to act on its behalf to conduct any procurement, the Lead Officer must contact CPU to agree the approach. The consultant(s) must carry out the tender exercise in accordance with these Contract Procedure Rules and the decision to award is the responsibility of the Lead Officer.
- 9.8.2.** All contracts for external consultants and advisors shall explicitly require that the consultants or advisors provide without delay any or all documents and records maintained by them relating to the services provided on request of the Lead Officer, and lodge all such documents and records with the Lead Officer at the end of the contract.
- 9.8.3.** The Lead Officer shall ensure that any consultant working for the Council has appropriate indemnity insurance for the duration of the contract.

## 10. Contract Award

- 10.1.** In line with the Public Contracts Regulations 2015, the Lead Officer must prepare a Tender Evaluation Report for every contract, framework agreement and mini-competition awarded above the EU Threshold. The written report must document all key decisions throughout the tendering process. A standard Evaluation Report template is available from CPU.
- 10.2.** CPU must be advised of all contracts entered into for inclusion onto the Contracts Register.
- 10.3. Contract Terms and Conditions**
- 10.3.1.** Contracts shall be entered into on the Authority's terms and conditions which shall be included with each Invitation to Tender. Exceptions to this Rule must be approved in writing by the Monitoring Officer.
- 10.3.2.** A contract on the contractor's own standard terms and conditions, or terms which are significantly different to those included or referred to at tender stage is not permitted under these rules unless approved in writing by the Monitoring Officer.
- 10.3.3.** The rules relating to technical specifications mean that any reference to a technical standard, make or type shall be prefaced with the words "or EU equivalent".
- 10.3.4.** Every contract the value or amount of which exceeds £75,000, shall be in writing and signed by at least two officers, or (at the discretion of the Monitoring Officer) have affixed the common seal of the Authority and shall detail:-
- the goods services or works to be supplied or carried out;
  - the price to be paid together with a statement as to the amount of any discount or other deduction;
  - the period within which the contract is to be completed and
  - such other conditions and terms as may be agreed between the parties.
- 10.3.5.** The contract will contain a clause requiring the contractor to obtain the written permission of the Lead Officer before assigning or sub-letting the contract or any part of it, other than as specifically allowed under the terms of the contract.

**10.3.6.** Where relevant International, European or British Standard specifications or standard codes of practice are available and current at the date of tender, the contract will require all goods, services or works used or supplied to be at least in accordance with that standard.

**10.3.7.** In every written contract a clause shall be inserted requiring the contractor to comply with any relevant directives or regulations of the European Commission for the time being in force in the United Kingdom.

**10.3.8.** Every contract must state that if the contractor fails to comply with its contractual obligations in whole or in part, the Authority may:-

- cancel all or part of the contract;
- complete the contract;
- recover from the contractor any additional costs in completing the contract;
- take other legal action against the contractor.

and to this end the Lead Officer shall ensure that the obligations of the contract are monitored.

**10.3.9.** Every written contract must state that the contractor will comply with all applicable laws, statutes, regulations and codes relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010.

**10.3.10.** The contractor shall be required to indemnify the Authority against:-

**10.3.10.1.** any claim in respect of employers' liability against the Authority or the contractor by any employees of the contractor or any sub-contractor; and

**10.3.10.2.** any claim for bodily injury to, or damage to property of, third parties, and

**10.3.10.3.** The contractor shall maintain appropriate insurance to a level to be agreed (see CPR 8.6) and when requested shall produce satisfactory evidence of the maintenance of such insurance.

**Contract  
Management**

**Contract  
Modification**

**Contract  
Extensions**

## **11. Contract Management**

**11.1.** After the Contract has been awarded a Contract Manager (if different to the Lead Officer) must be identified who will manage the day to day aspects of the contract for its term. An appropriate contract management plan must be agreed upon award and advice sought from CPU.

**11.2.** When contracts are modified at any time during the contract term a new tender process will be required unless specific conditions as set on in the Public Contracts Regulations (2015) are met. Advice must be sought from CPU before proceeding under these conditions.

### **11.3. Contract Extensions**

**11.3.1.** A contract may be extended subject to the following conditions;

- where the original tender document and subsequent contract included provision for an extension to the contract and;
- specified the duration or the maximum duration of the potential extension then the contract may be extended and;
- if the Lead Officer is satisfied that the current provider offers best value for money and a quality service/goods/works.

**11.3.2.** A Contract Extension form must be signed off by Head of Service prior to any extension being taken up. Contact CPU for the template.

## **12. Exceptions and Waivers to Requirements of Competition**

### **12.1. Lead Officer Decision (Up to OJEU Threshold Value)**

**12.1.1.** Provided that a proposed contract complies with all other relevant Contract Procedure Rules, Procurement Guidance or Financial Procedure Rules, the tendering procedures need not apply to the following:-

**12.1.1.1.**any advice or service provided by Counsel.

**12.1.1.2.**purchases made by the Authority in conjunction with another public body in accordance with the terms of any Contracts or Framework Agreements entered into by or on behalf of any consortium association (including All Wales Public Sector arrangements) or similar body provided that the procedures followed are in accordance with a method prescribed or adopted by the consortium, association or similar body (see CPR 5.5.1).

**12.1.1.3.**purchases, works and services required by the Lead Officer for the following purposes:-

- to prevent danger or injury to Authority staff or members of the public;
- to prevent damage or serious deterioration to land buildings or plant;
- to maintain essential services;
- to avoid enforcement action against the authority for non-compliance with some statutory provision;
- to make land or property secure against unauthorised access or use;
- for any other purpose where the Authority or the public will be seriously prejudiced if such purchases works or services are not arranged urgently;

- provided that the requirement for goods, works or services is strictly necessary for reasons of extreme urgency brought about by unforeseeable events where the time limits for a procurement exercise cannot be complied with. A procurement in accordance with these Contract Procedure Rules should be instigated at the earliest opportunity thereafter.

**12.1.1.4.** works or services to statutory undertakers apparatus where affected by major works where legislation provides that such works must be carried out by the statutory undertaker.

## **12.2. Head of Revenues and Financial Compliance Decision (Up to £25,000)**

**12.2.1.** The Lead Officer shall seek approval from the Head of Revenues and Financial Compliance for any exception proposed under this CPR 12.2 prior to embarking upon the alternative procedure or, if this is not possible, as soon as possible thereafter :-

**12.2.1.1.** the purchase of proprietary or patented goods, services or works are obtainable only from one firm and where no reasonably satisfactory alternative is available;

**12.2.1.2.** the purchase of named goods, services or works required to be compatible with an existing installation as authorised by the Lead Officer;

**12.2.1.3.** the execution of works or provision of goods, services or works of a specialised nature which in the opinion of the Lead Officer are carried out by only one provider and where no reasonably satisfactory alternative is available;

**12.2.1.4.** the purchase of a work of art or museum specimen as authorised by the Lead Officer;

**12.2.1.5.** Contracts entered into by the Authority as agents for a Department of State, Welsh Government or any other local or public authority provided that the Authority follows the procedures of such department or authority;

**12.2.1.6.** any other exceptions and waivers to these Rules shall only be given in exceptional circumstances and will be authorised by the Head of Revenues and Financial Compliance following submission of a written justification by the relevant Lead Officer

**12.2.1.7.** For exceptions required from within the Head of Revenues and Financial Compliance's service area, approval will be required from the Head of Financial Services instead.

### **12.3. Monitoring Officer and Section 151 Officer Decision (Above £25,000 and up to OJEU Threshold Value)**

**12.3.1.** The Lead Officer shall seek approval from the Monitoring Officer and Section 151 Officer for any exception proposed under this CPR 12.3 prior to embarking upon the alternative procedure or, if this is not possible, as soon as possible thereafter :-

**12.3.1.1.** the purchase of proprietary or patented goods, services or works are obtainable only from one firm and where no reasonably satisfactory alternative is available;

**12.3.1.2.** the purchase of named goods, services or works required to be compatible with an existing installation as authorised by the Lead Officer;

**12.3.1.3.** the execution of works or provision of goods, services or works of a specialised nature which in the opinion of the Lead Officer are carried out by only one provider and where no reasonably satisfactory alternative is available;

**12.3.1.4.** the purchase of a work of art or museum specimen as authorised by the Lead Officer;

**12.3.1.5.** Contracts entered into by the Authority as agents for a Department of State, Welsh Government or any other local or public authority provided that the Authority follows the procedures of such department or authority;

**12.3.1.6.** any other exceptions and waivers to these Rules shall only be given in exceptional circumstances and will be authorised by the Monitoring Officer and Section 151 Officer following submission of a written justification by the relevant Lead Officer.



## 12.4. Monitoring Officer and Section 151 Officer Decision (Above OJEU Threshold Value)

**12.4.1.** Where a Negotiated Procedure without Prior Publication is proposed (OJEU Procedure) the Lead Officer will be required to seek approval from the Monitoring Officer and Section 151 Officer.

**12.4.1.1.** Negotiated Procedure without Prior Publication can only be used in the following cases: -

(a) where no tenders, no suitable tenders, no requests to participate or no suitable requests to participate have been submitted in response to an open procedure or a restricted procedure.

(b) where the works, suppliers or services can be supplied only by a particular economic operator for any of the following reasons: -

- (i) the aim of the procurement is the creation or acquisition of a unique work of art or artistic performance,
- (ii) competition is absent for technical reasons,
- (iii) the protection of exclusive rights, including intellectual property rights.

But only, in the case of paragraphs (ii) and (iii) where no reasonable alternative or substitute exists, and the absence of competition is not the result of an artificial narrowing down of the parameters of the procurement;

(c) insofar as is strictly necessary where, for reasons of extreme urgency brought about by events unforeseeable by the contracting authority, the time limits for the open or restricted procedures or competitive procedures with negotiation cannot be complied with.

Single Tender  
Action  
Reporting

CPU Reporting

Review

**12.4.2.** Any exceptions and waivers to these Rules above the OJEU threshold (outside of 12.4.1) must be referred to the Monitoring Officer and Section 151 Officer via the online Exception Reporting System and these will then be referred to the Corporate Management Team (CMT).

**12.5. Single Tender Action Reporting (Above £75,000)**

**12.5.1.** The Section 151 Officer will prepare a retrospective report to the Authority's Audit Committee for all Single Tender Actions (exceptions granted above £75,000 under clauses 12.2 or 12.3 above) and the subsequent procurement activity undertaken.

**12.6. Exception Reporting**

**12.6.1.** All exceptions must be reported to CPU for consideration prior to submission for approval via the online Exception Reporting System, and will be recorded on the Contracts Register.

**13. Review**

**13.1.** The Corporate Procurement Unit shall continually review these Contract Procedure Rules and shall undertake a formal review every three years. Any amendments shall be subject to approval by the Authority's Audit Committee.

## APPENDIX 1 - Definitions & Interpretations

<b>Abnormally Low Tender</b>	For the purposes of these rules abnormally low shall be taken to mean a Tender whose price is considered significantly lower than most of, or the average of all tenders in the same Tender exercise.
<b>Aggregation</b>	Adding together the value of separate contracts for the same supply, service and works.
<b>Approved List</b>	An approved/select list presents a significant risk to the Authority and is not recommended as an acceptable procurement practice. Prior approval from Monitoring Officer and Section 151 Officer must be sought prior to the set up or adoption of an approved/select tender list.
<b>Authority</b>	All references to the Authority in these Contract Procedure Rules shall include the Governing Body of each school falling under the jurisdiction of the Authority as the Local Education Authority if relevant.
<b>Bond</b>	A bond is intended to protect the Council against a level of cost arising from a contractor's failure.
<b>Community Benefits</b>	Through the Tender exercise, seeking to promote additional opportunities which will benefit the wider community. This might include training and employment opportunities, improved supply-chain opportunities, increased educational contributions and/or community initiatives.
<b>Contract</b>	Any agreement (whether or not in writing) between the Authority and one or more other parties for:- <ul style="list-style-type: none"> <li>• the sale of goods or materials;</li> <li>• the supply of goods or materials;</li> <li>• the execution of works</li> <li>• the provision of services (including accommodation and facilities).</li> </ul>
<b>Contract Management</b>	Ensuring that the right contractual agreement for an organisation is established and managed in the most effective manner, enabling both parties to fully meet their obligations providing the right quality of service/product, on time, within budget and compliant with specification requirements.
<b>Contract Modification</b>	The Public Contracts Regulations (PCR) 2015 provide clarity about the extent to which a contract can be amended after award without the need to re-advertise in OJEU. See PCR (2015) Regulation 72 which outlines the detail.
<b>Contractor</b>	see <b>Supplier</b>

<b>Contract Register</b>	A register of awarded contracts and frameworks within the Authority, held by CPU.
<b>Corporate Contract</b>	Contracts for Goods/Works or Services that are in place for use by all departments of the Council. These contracts enable Officers to acquire products/services efficiently and effectively.
<b>Corporate Procurement Unit (CPU)</b>	The Authority's Corporate Procurement Unit (CPU) provides advice, support and guidance on Procurement.
<b>Dynamic Purchasing System</b>	A procurement tool which is completely electronic and used for making commonly used purchases allowing new suppliers to join at any time.
<b>e-Auction</b>	An e-Auction (electronic auction) is an electronic marketplace between buyers and bidders, utilised as part of the costing criteria of the tender evaluation.
<b>EU Threshold</b>	The contract value at which the EU Public Contracts Directive applies. These change in January every two years.
<b>Framework Agreement</b>	An agreement between one or more authorities / public bodies and one or more economic operators, to establish the terms governing contracts to be awarded during a given period (call-offs).
<b>Lead Body</b>	Any Body which the Authority is legally allowed to procure with or through, including Central Government Departments, other Local Authorities and other public sector bodies e.g. NPS.
<b>Lead Officer</b>	The Lead Officer (LO) shall be responsible for the procurement process and following award will be the primary link between the Authority and the relevant supplier. The LO shall be responsible for the management of that contractual arrangement and ensuring that the price(s) paid is/are in accordance with the terms of the contract
<b>Light Touch Regime</b>	The new light-touch regime (LTR) is a specific set of rules for certain service contracts that tend to be of lower interest to cross-border competition. Those service contracts include certain social, health and education services, defined by Common Procurement Vocabulary (CPV) codes as outlined in Schedule 3 of the public Contracts Regulations (2015).

<b>Mini Competition /Call-off</b>	A mini competition is the process followed to place a call-off contract under a framework agreement where the best value supplier has not been specified in the original terms of the framework agreement. All suppliers within the original framework agreement are invited to submit bids against the original terms.
<b>Monitoring Officer</b>	The Monitoring Officer is the officer designated by the Authority in accordance with the provisions of Section 5 of the Local Government and Housing Act 1989. This role is currently undertaken by the Head of Administration and Law.
<b>Most Economically Advantageous Tender (MEAT)</b>	The tender that will bring the greatest benefit to the Authority having taken a number of factors into consideration, including quality and price
<b>National procurement Service (NPS)</b>	The National Procurement Service (NPS) for Wales, hosted by the Welsh Government, works collaboratively with public sector member organisations to set up collaborative arrangements in common and repetitive spend areas.
<b>Quotation</b>	A quotation based on price and any other relevant matter, without the issue of a formal tender.
<b>Section 151 Officer</b>	The officer designated by the Authority under Section 151 of the Local Government Act 1972. This role is currently undertaken by the Director of Corporate Services.
<b>Single Tender Action</b>	Single Tender Action is only to be used in rare and exceptional circumstances and is broadly defined as procurement for which no competition is sought or where competition is not available in the marketplace. This definition applies to all single tender actions above the Tender Threshold.
<b>Standstill</b>	The minimum period which must elapse between notification of an award decision and the start of the contract. In the UK the standstill period is 10 days.
<b>Supplier</b>	A supplier of works, goods or services to the Council.
<b>Tender</b>	An economic operator's proposal submitted in response to an invitation to Tender.

<p><b>Tender Evaluation Panels</b></p>	<p>A group of Officers appointed by the Lead Officer to undertake the tender evaluation exercise for a contract or Framework. The group of officers in question shall normally remain constant throughout the process and shall possess the necessary qualifications and/or expertise to advise the Lead Officer on technical, procurement, legal, financial, policy and staffing issues.</p>
<p><b>Tender Procedures</b></p>	<p><b>Open</b> - All eligible applicants are invited to tender in a one-stage procurement process.</p> <p><b>Restricted</b> - Only eligible applicants who meet the client authority’s criteria are invited to tender in a two-stage procurement process.</p> <p><b>Competitive Procedure with negotiation</b> - This allows the contracting authority flexibility around whether to negotiate - it is possible to reserve the right (by stating this in the OJEU advertisement) not to negotiate and to simply award the contract based on initial tenders submitted.</p> <p><b>Competitive Dialogue</b> - Permits discussion of different options before choosing a particular solution. It can be used in complex contracts where technical solutions are difficult to define or where development of the best solution is wanted. This procedure contains more flexibility around negotiation with the winning bidder (provided this does not modify the essential aspects of the contract or procurement or amount to a distortion of competition).</p> <p><b>Innovative Partnership</b> – This process allows for the R&amp;D and purchase of a product or service within the same single procurement process (with transparency and other safeguards built in to it).</p> <p><b>Negotiated Procedure without Prior Publication</b> – This procedure can only be used in narrowly defined circumstances, e.g. where no tenders, no suitable tenders or no suitable requests to participate were submitted in response to an open or restricted procedure, or where for technical or artistic reasons, or the protection or exclusive rights, the contract can only be carried out by a particular supplier. This process should only be used in exceptional cases.</p>

	Further detail on all the Procedures above is available in the Procurement Guidance (available on the Intranet) or by contacting CPU.
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